

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

JOHN SAWULSKI AND RICHARD SAWULSKI, A  
CO-PARTNERSHIP d/b/a MIDWEST MECHANICAL

and

Case 7-CA-22695

SHEET METAL WORKERS LOCAL 80,  
JOINT TRUST FUNDS

DECISION AND ORDER

Upon a charge filed by Sheet Metal Workers Local 80, Joint Trust Funds, 11 October 1983, the General Counsel of the National Labor Relations Board issued a complaint 30 November 1983 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On 2 March 1984 the General Counsel filed a Motion for Default Summary Judgment. On 6 March 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

## Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all the allegations in the Complaint shall be deemed to be admitted true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Regional Attorney for Region 7, by letter dated 22 December 1983, notified the Company that unless an answer was received by 4 January 1984 a Motion for Default Judgment would be filed. On 1 February 1984, the Regional Director for Region 7 issued an order postponing hearing due to the Respondent's failure to file an answer to the complaint and again notified the Respondent of the General Counsel's intent to file a Motion for Default Judgment. The Regional Director for Region 7, in his affidavit dated 27 February 1984, stated that the Respondent failed to file an answer to the complaint. The Respondent filed no response to the Notice to Show Cause.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the the entire record, the Board makes the following<sup>1</sup>

## Findings of Fact

## I. Jurisdiction

The Respondent, a co-partnership doing business under the trade name and style of Midwest Mechanical, is engaged as a sheet metal contractor in the

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<sup>1</sup> Member Hunter notes that the Respondent has not raised the application of Sec. 10(b) of the Act as an affirmative defense.

construction industry at its principal office and place of business at 22975 Gill Road, Farmington Hills, Michigan. During the year ending 31 December 1982, a representative period, the Respondent, in the course and conduct of its business operations, purchased and caused to be delivered at its various jobsites within the State of Michigan goods and materials valued in excess of \$75,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its Michigan jobsites directly from points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Sheet Metal Workers International Association, Local Union No. 80, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time sheet metal workers employed by the Respondent at its Farmington Hills place of business and job sites located within the territorial jurisdiction of the Union; but excluding all guards and supervisors within the meaning of the Act.

Since at least 22 February 1979 the Union and the Respondent have been parties to successive collective-bargaining agreements, the most recent of which is effective by its terms from 1 June 1981 until 31 May 1984, and the Union has been and now is the exclusive collective-bargaining representative of the employees in the unit described above. The collective-bargaining agreement between the Union and the Respondent provides for the payment of moneys into various funds, collectively referred to as Sheet Metal Workers Local 80, Joint Trust Funds, established for the benefit of the employees in the unit described above. The agreement further provides for auditing, on demand by the

Funds, the Charging Party, of any and all pertinent records of employers bound by the agreement.

Since on or about 1 September 1982 the Respondent, despite requests by the Charging Party and the Union, has failed and refused to allow the Charging Party to audit its records.

Accordingly, we find that the Respondent has, since on or about 1 September 1982, and at all times material thereafter, breached and failed to honor section 10,E of its collective-bargaining agreement and thereby has refused to bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, and that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### Conclusions of Law

1. By failing and refusing since on or about 1 September 1982 to bargain with the Union by failing and refusing, despite requests by the Union and Sheet Metal Workers Local 80, Joint Trust Funds, to allow Sheet Metal Workers Local 80, Joint Trust Funds to audit its records, as required by the collective-bargaining agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

2. By the aforesaid conduct, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

## Remedy

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to apply the terms of its collective-bargaining agreement with Sheet Metal Workers International Association, Local Union No. 80, AFL--CIO, and to post appropriate notices.

## ORDER

The National Labor Relations Board orders that the Respondent, John Sawulski and Richard Sawulski, a co-partnership d/b/a Midwest Mechanical, Farmington, Michigan, their agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain with Sheet Metal Workers International Association, Local Union No. 80, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit, by failing and refusing to allow Sheet Metal Workers Local 80, Joint Trust Funds to audit its records, as required by its collective-bargaining agreement with the Union. The appropriate unit is:

All full time and regular part time sheet metal workers employed by the Respondent at its Farmington Hills place of business and job sites located within the territorial jurisdiction of the Union; but excluding all guards and supervisors within the meaning of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps have been taken to comply.

Dated, Washington, D.C.

30 April 1984

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Don A. Zimmerman,

Member

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Robert P. Hunter,

Member

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Patricia Diaz Dennis,

Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

(a) Allow the auditing of its records pursuant to the terms and conditions of the above-described collective-bargaining agreement.

(b) Post at its principal office and place of business in Farmington Hills, Michigan, and its various jobsites within the State of Michigan copies of the attached notice marked "'Appendix.'"<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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<sup>2</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

## APPENDIX

## NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Sheet Metal Workers International Association, Local Union No. 80, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit, by failing and refusing to allow Sheet Metal Workers Local 80, Joint Trust Funds to audit our records as required by our collective-bargaining agreement with the Union. The appropriate unit is:

All full time and regular part time sheet metal workers employed by the Respondent at its Farmington Hills place of business and job sites located within the territorial jurisdiction of the Union; but excluding all guards and supervisors within the meaning of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL allow the auditing of our records pursuant to the terms and conditions of the above-described collective-bargaining agreement.

JOHN SAWULSKI AND RICHARD  
SAWULSKI, A CO-PARTNERSHIP  
d/b/a MIDWEST MECHANICAL

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(Employer)

Dated ----- By -----  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Patrick V. McNamara Federal Building, Room 300, 477 Michigan Avenue, Detroit, Michigan 48226, Telephone 313--226--3244.